



EXHIBIT 3
DATE 1/25/13
HB 186

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TESTIMONY IN OPPOSITION TO HB¹⁸⁶146

**Presented by John Barrows, Montana Newspaper Association
January 25, 2013 - House Business and Labor Committee
Tel. 422-2850**

Chairman and Members:

My name is John Barrows, representing the Montana Newspaper Association, which includes Montana's 87 daily and weekly newspapers. We oppose HB¹⁸⁶146 as written because it inadvertently poses an obstacle to Montana citizens effectively enforcing their Constitutional Right to Know as outlined in Article 2 Section 9 of the Montana State Constitution.

Currently, under 2-3-221, MCA, the public is provided a way to press their Right to Know in District Court, with "*A plaintiff who prevails in an action brought in district court to enforce his rights under Article II, Sec. 9, of the Montana Constitution may be awarded his costs and reasonable attorney's fees.*"

This bill appears to upend this, and other fee-shifting statutes in state law. The fee provision of 2-3-221 has been of vital importance in helping assure that state and local governmental bodies and officials, large and small, remain open and transparent in their transactions, deliberations and records.

A review of past Supreme Court decisions since the adoption of the Constitutional Right to Know shows nearly 100 cases, about one third of which were filed by media and the remainder by citizens, organizations and governmental bodies and officials. On a District Court level there are a significant number filed each year. Among recent cases by newspapers, they have been filed by the largest, and the smallest, from the Billings Gazette to the Jordan Tribune.

Even the simplest of suits can cost an individual, or newspaper, thousands of dollars to enforce the Right to Know... it is the only effective remedy allowed to assure its enforcement. Awarding of attorney fees is not automatic, but subject to the order of a District Judge. If the plaintiff loses the case, both sides pay their own costs.

Making such a fundamental right subject to the penalty of also being faced with the possibility of paying the attorney fees of the governmental body which the plaintiff was suing to enforce his Constitutional Right to Know would have a debilitating and chilling effect, discouraging efforts to assure openness and transparency of our government.

We ask that if the committee passes this bill, that it do so only with the specific exemption provided in 2-3-221, MCA, or with an exemption that would not affect any other fee shifting statute now in effect, including 2-3-221.